

Items 1. 04-03-2025

**FMAT (Arbaward) 13 of 2025
CAN 1 of 2025**

^{sg} Ct. 12

Shantiniket Cooperative Housing Society Ltd.
Versus
M/s. SHP Housing Pvt. Ltd.

Mr. Susenjit Banik
Mr. Gunjan Shah
Miss. Shreya Agarwal
Miss Livia Parveen
Mr. Mrinal Saha

...for the appellant

1. The appeal is arising out of an order dated 11th February, 2025 passed by the learned Additional District Judge, 8th Court at Barasat, North 24 Parganas in an application filed under Section 9 of the Arbitration and Conciliation Act.

2. The petitioner is a Cooperative Society. The petitioner was allotted a plot of land, particulars whereof is stated in Indenture of Lease annexed to the petition. The opposite party was engaged to make construction of one G+4 storied building on the land in question. An unregistered agreement for assignment dated 8th March, 2023 was alleged to have been entered into between the parties for the purpose of assigning the lease of the said property in favour of the opposite party upon payment of Rs.1.30 crore. The opposite party paid a sum of RS.30.92 lakh and had failed and neglected to pay the balance amount. The agreement was terminated.

3. While the appellant was in search of a new contractor, the opposite party approached the petitioner and offered to construct the building for a consolidated rate of

Rs.2500/- per sq.ft, to which the petitioner agreed. Pursuant to the unregistered agreement for construction dated 8th March, 2024, the possession of the said property was handed over to the opposite party and the said opposite party commenced the construction work accordingly.

4. It is alleged that the unauthorized construction has been carried out. The petitioner has not informed such unauthorized construction by the developer to the local Municipal authority. Moreover, the nature and extent of the unauthorized construction is not clear from the pleadings.

5. It is further alleged that the said construction was in violation of the building plan and also inferior quality of materials have been used during construction. The agreement, however, has not been cancelled. It appears that the matter is fixed on 11th March, 2025.

6. In view of the fact that the matter is fixed on 11th March, 2025, we are of the view that the matter is required to be heard upon notice to the respondent.

7. We make it clear that any construction made by the opposite party/respondent in violation of the sanctioned plan, shall not create any equity in favour of the developer and shall be obliged to demolish the unauthorized construction at his own risk, cost and peril and shall abide by the result of the section 9 application. The developer shall be held responsible for any such unauthorized construction.

8. We direct the petitioner to serve a copy of the application under Section 9 of the Arbitration and Conciliation Act upon the opposite party/respondent by speed post with

acknowledgment due as well as by currier within 48 hours from date along with copies of this application and the order for information and doing the needful.

9. In the event, in spite of satisfactory service the respondent is not represented, we would request the learned Additional District Judge, 8th Court at Barasat, North 24 Parganas to consider the prayer for interim relief in absence of the respondent.

10. Under such circumstances, the appeal and the application are disposed of with the above direction.

11. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)